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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-388571

DATE: October 18, 1977

MATTER OF: Consolidated Service, Inc.

DIGEST:

Where SBA declines to review contracting officer's determination of nonresponsibility as to offeror's integrity because of FBI investigation and where matter becomes subject of criminal indictment, it is inappropriate for GAO to review the contracting officer's determination.

Consolidated Service, Inc. (Consolidated), a small business concern, protests the award on February 28, 1977, of contract No. N00612-76-D-0061 for ship overhaul services by the Naval Supply Center, Charleston, South Carolina, to the Jonathan Corporation. Consolidated was the low offeror but was determined on January 31, 1977 by the contracting officer under section 1-903.1(iv) of the Armed Services Procurement Regulation (ASPR) (1976 ed.) to be nonresponsible due to a lack of integrity in the performance of contracts N00612-75-D-0013 and N00612-76-D-0061, also awarded by Charleston Naval Supply Center. This determination was based on a preliminary audit report by the Defense Contract Audit Agency (DCAA) which indicated that Consolidated did not pay the Department of Labor established wage rates, billed overtime and holiday hours incorrectly, billed the Government for per diem and mileage expenses at rates higher than actual payments, did not require its employees to prepare travel expense reports, and improperly added a material handling factor to material purchased for the contracts. These matters were also the subject of a final DCAA report and an investigation by the Federal Bureau of Investigation (FBI). The FBI investigation, we are informed, resulted on June 30, 1977 in an indictment for fraud of various Consolidated officials.

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After the contracting officer made the above determination and in accordance with ASPR § 1-705.4(c)(vi) (1976 ed.), the appropriate Small Business Administration (SBA) Regional Office was furnished documentation relevant to the contracting officer's determination that the firm was not responsible for reasons other than deficiencies in capacity and credit. However, the SBA declined to consider the matter because of the FBI investigation.

Counsel for Consolidated disputes the Navy's nonresponsibility determination primarily on the grounds that the issues raised by the DCAA report do not show that Consolidated wilfully violated the terms of its previous contracts. In this regard counsel has submitted its position regarding each issue raised in the report and subsequent determination.

Our Office has held that the procedures of SBA provide an effective process for reviewing agency determinations of nonresponsibility regarding a bidder's tenacity, perseverance and integrity and, therefore we will not undertake to review such a determination by the contracting officer unless there is a showing of bad faith or fraud on the part of the administrative officials involved. Building Maintenance Specialists, Inc., 54 Comp. Gen. 703 (1975), 75-1 CPD 122.

In view of the fact that the SBA has refused to consider the matter because the issues raised were the subject of an FBI investigation and since we have been informed by counsel that the pending indictment relates to a number of the contract violations found in the DCAA report and relied upon by the contracting officer in reaching his determination, we do not believe it would be appropriate for this Office to review the matter. Turner & Fralcy, Inc., and Hough & Schmidt Construction Co., Inc. (A Joint Venture), B-183308, April 30, 1975, 75-1 CPD 271.

Accordingly, the protest is dismissed.

Paul G. Dembling
for Paul G. Dembling
General Counsel